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DISCUSSION RESPONSE

The pandemic dilemma

TINE HANRIEDER — 31 August, 2015



A reply to Pedro Villarreal

Pedro Villareal wonders whether and how global health security can be enhanced through international law. He raises two interrelated questions: First, should an expert body be able to force the WHO Director-General to declare a Public Health Emergency of International Concern (PHEIC)? And second: Should there be sanctions against states that exceed the security measures recommended by the WHO? In other words: Should they be punished for unnecessarily closing their borders to infected states?

It is interesting to see how every new health crisis raises new and different ideas for legal fixes. In the wake of the 2002/3 SARS crisis, the WHO was delegated the authority to declare PHEICs and issue temporary recommendations. At

the time, experts also wondered whether states that do not share outbreak information should be sanctioned by international organizations such as the United Nations Security Council, the World Trade Organization or the International Monetary Fund. The new IHR (2005) then empowered the WHO to interpret the nature of emerging health threats independently, and to become active even when states were reluctant to share information about outbreaks in their countries. Now, the WHO's delayed response to the Ebola outbreak raises the question of installing yet another decision body that determines the extent of an emergency.

These concerns are interconnected in a complex strategic dilemma between states that fear both: the harm caused by infectious diseases and the harm caused by other states' quarantines and embargoes. The history of the IHR is replete with incidents of states veiling the extent of outbreaks in their countries, and also the Sierra Leonean government is accused of having underreported the scope of the Ebola outbreak in 2014. States that share such sensitive information – and allow the WHO to arbitrate between their economic and health security concerns – must trust that they will not be closed off international supply chains unless it is technically justified. On the other hand, states that comply with the WHO recommendations must trust that they will not expose their populations to major health threats.

Hence, the two problems that Villareal discusses cannot be separated: States that forego their sovereign right to take precautionary measures will want a guarantee that all measures recommended are timely and sufficient – i.e., that no emergency is declared too late or entirely dismissed. This

is an unlikely scenario. It is based on heroic assumptions about (a) any expert body's ability to anticipate the course of events in acute health crises and (b) about the preparedness of states to risk one fatal and irreversible lack of precaution. I think the best alternative that the international community can strive for is trust building, information sharing, and transparent decision making in the WHO. Pandemic cooperation is a case for soft international law, not for a global sanction regime or a global health sovereign.

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